

# **EXHIBIT A**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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 )  
In Re: ) SIPA LIQUIDATION  
 )  
BERNARD L. MADOFF INVESTMENT ) No. 08-01789 (BRL)  
SECURITIES LLC, ) (Substantively  
 ) Consolidated)  
Debtor. )  
----- )  
IRVING H. PICARD, Trustee of the )  
Liquidation of Bernard L. Madoff )  
Investment Securities LLC, )  
Plaintiff, )  
vs. ) Adv. Pro. No.  
 ) 09-01182 (BRL)  
J. EZRA MERKIN, GABRIEL CAPITAL, )  
L.P., ARIEL FUND LTD., ASCOT )  
PARTNERS L.P., GABRIEL CAPITAL )  
CORPORATION, )  
Defendants. )  
----- )

VIDEOTAPED DEPOSITION OF STEVE POMERANTZ, Ph.D.  
New York, New York  
July 8, 2015

Reported by: BONNIE PRUSZYNSKI, RMR, RPR, CLR  
JOB NO. 95461

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<p>1 S. Pomerantz</p> <p>2 harder it is to consistently do better, but</p> <p>3 it's -- there is always a pendulum swinging.</p> <p>4 Q And it's possible to always do</p> <p>5 worse?</p> <p>6 A It's possible to always do worse.</p> <p>7 Q The -- so you talked to the head</p> <p>8 trader. Did you go and get trade</p> <p>9 confirmations when you were doing due</p> <p>10 diligence on the WPG Software Fund?</p> <p>11 A I never had reason to look at his</p> <p>12 confirmations.</p> <p>13 Q Why not?</p> <p>14 A There was nothing that suggested to</p> <p>15 me that I would want to look at them. I</p> <p>16 understood what his strategy was. I</p> <p>17 undertook what I would call performance</p> <p>18 attribution types of analyses. In</p> <p>19 particular, we were using a product called</p> <p>20 Barra, B-A-R-R-A. That is pretty standard</p> <p>21 for performance attribution studies for these</p> <p>22 types of products, and the performance</p> <p>23 attribution analysis would pretty much</p> <p>24 identify why he was making money or losing</p> <p>25 money on either an absolute or relative</p>	<p>1 S. Pomerantz</p> <p>2 basis.</p> <p>3 Q And one of Barra's products, if I</p> <p>4 remember correctly, is to have programs where</p> <p>5 you can replicate an index by purchasing or</p> <p>6 selling some much smaller subset of the</p> <p>7 index; is that right?</p> <p>8 A I think they license replication</p> <p>9 technology.</p> <p>10 Q So, for example, if you want to run</p> <p>11 an S&amp;P 500 Index fund, they have technology</p> <p>12 that will get you to a very small tracking</p> <p>13 error with maybe 80 or 100 stocks. Is that</p> <p>14 right?</p> <p>15 A I don't know the particulars of the</p> <p>16 product or certainly how it's evolved today,</p> <p>17 but in spirit, that's what those products do.</p> <p>18 You have a targeted tracking error, and they</p> <p>19 will create a basket.</p> <p>20 Q And likewise, if you wanted to</p> <p>21 replicate or attempt to model the Russell</p> <p>22 2000, rather than owning 2,000 stocks, they</p> <p>23 will help you do it with 200 or 300; right?</p> <p>24 A Subject to tracking errors. They</p> <p>25 will also enable you to embed exposures in</p>
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<p>1 S. Pomerantz</p> <p>2 your portfolio, if you don't want to create</p> <p>3 an index product or if you want an enhanced</p> <p>4 index product. They do have software that</p> <p>5 does that.</p> <p>6 Q And I take it there is some</p> <p>7 advantage to being able to replicate an index</p> <p>8 without owning every component?</p> <p>9 A It depends on the size of your</p> <p>10 portfolio. If you have a million dollars and</p> <p>11 you want to replicate the Russell 2000, you</p> <p>12 are not going to buy 2,000 stocks, because</p> <p>13 you are going to wind up buying \$230 worth of</p> <p>14 a single stock and you are going to pay</p> <p>15 enormous commissions for something like that.</p> <p>16 So, if the size of the portfolio is</p> <p>17 very small in asset size, you can't replicate</p> <p>18 it with 2,000 stocks. You need to find a 100</p> <p>19 stock solution, and then you just suffer the</p> <p>20 tracking error that comes from that.</p> <p>21 If the size of the portfolio and</p> <p>22 assets gets large enough, then you will buy</p> <p>23 all 2,000 stocks.</p> <p>24 Q Do you know whether Barra's</p> <p>25 customers for these products include pension</p>	<p>1 S. Pomerantz</p> <p>2 funds that have hundreds of billions of</p> <p>3 dollars under management?</p> <p>4 A If you are not actually in the</p> <p>5 management of the money, you have no need for</p> <p>6 this product, so I don't know if -- I mean a</p> <p>7 pension fund could buy it. Anyone could buy</p> <p>8 it. It's on the market. But if you weren't</p> <p>9 managing money, you would have no need for</p> <p>10 that.</p> <p>11 Q Have you ever managed money?</p> <p>12 A Yes.</p> <p>13 Q When have you done that?</p> <p>14 A At Weiss, Peck &amp; Greer, I was</p> <p>15 involved in portfolio management</p> <p>16 responsibilities for a number of fixed-income</p> <p>17 products.</p> <p>18 I was also involved in an equity</p> <p>19 product at Weiss, Peck &amp; Greer that</p> <p>20 ultimately left the firm and became an</p> <p>21 independent entity called QED. And I</p> <p>22 retained portfolio responsibilities to the</p> <p>23 portfolios being managed by QED.</p> <p>24 QED was subsequently acquired by</p> <p>25 New York Life Investment Management, and I</p>

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1 S. Pomerantz  
2 Q I take it it's your opinion that  
3 that does not require in every circumstance  
4 performing various quantitative analyses that  
5 you have done in your report.

6 A The only reason you wouldn't was if  
7 you couldn't, it was physically impossible,  
8 or if the analyses that I offer here are not  
9 useful or applicable to a particular  
10 strategy, or you have been able to confirm  
11 information through some other method or  
12 mechanism that I don't know about it.

13 I don't know how you can confirm  
14 certain things without actually going through  
15 these analyses. Perhaps there are other  
16 analyses that people will go through. I'm  
17 not aware of them. I have never seen them.  
18 These are all the standard types of analyses  
19 that people go through to confirm certain  
20 things.

21 Q Going back to the software fund,  
22 the WPG Software Fund, as an example, you had  
23 transaction-level data available to you;  
24 right?

25 A I did.

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1 S. Pomerantz  
2 they were never significant.

3 Q Did you go and look at individual  
4 trade confirmations in your due diligence of  
5 the software fund?

6 A No, I didn't look at confirmations,  
7 but I will give you as an example, I was  
8 aware of where the fund traded relative to  
9 VWAP. I was aware of that. And it just  
10 didn't move me one way or another as being  
11 significant. It didn't raise a red flag. It  
12 didn't seem significant to me at all as far  
13 as my understanding of that particular hedge  
14 fund strategy, although implicitly, it's  
15 actually being calculated, but that's just  
16 because the software is doing it.

17 Q Have you ever looked at trade  
18 confirmations as part of your due diligence?

19 A Actually, in a variety of the tax  
20 shelter cases that I dealt with, the  
21 confirmations were actually -- were actually  
22 specifically looked at, and a variety of my  
23 opinions actually centered around things that  
24 were on the confirmations or that were not on  
25 the confirmations that should have been.

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1 S. Pomerantz  
2 Q When you were doing due diligence  
3 on that fund?

4 A Yes.

5 Q And so, you could have gone back  
6 and looked at trade confirmations; right?

7 A I would have no need to do that.  
8 There was nothing about that particular  
9 strategy that was contingent upon the  
10 execution ability.

11 Q So, you could have done it. You  
12 just concluded that you didn't need to.

13 A Actually, you know, I take that  
14 back. That actually implicitly was done  
15 within the analysis. Within the performance  
16 attribution framework, it would have  
17 identified certainly types of -- it would  
18 have identified some of the types of things  
19 that are identified in this report.

20 Even though transaction-level  
21 detail really is not relevant for that  
22 particular strategy, the performance  
23 attribution that was performed would  
24 actually -- did actually identify certain  
25 analyses that were transaction level, but

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1 S. Pomerantz

2 Q Those were confirmations of equity  
3 trades?

4 A Yeah. They actually were  
5 confirmations of equity trades, and there was  
6 actually information on the trades that  
7 should have been there and wasn't there, and  
8 that was -- that was actually a part of my  
9 opinion. It was a small piece, but it was  
10 actually a part of the opinion.

11 Q Okay. What information should have  
12 been there in the tax shelter cases that  
13 wasn't?

14 A In those particular cases -- in  
15 those particular cases, the stock was being  
16 purchased on a forward basis, and there would  
17 have been an implied interest rate, and on  
18 the confirmation, there was actually a box  
19 that said interest, in anticipation of a  
20 forward settlement, and there was a zero in  
21 that box, when there actually should have  
22 been a real value. The confirmation actually  
23 did not represent the actual amount of money  
24 that was supposed to move pursuant to that  
25 stock transaction.

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1 S. Pomerantz  
2 I mean, there were a host of other  
3 red flags and issues, but actually in that  
4 particular matter, there was an issue with  
5 the confirmations, and I did identify it as  
6 part of my due diligence of the transaction.

7 Q Well, you didn't do due diligence  
8 of the transaction in the tax shelter cases;  
9 right?

10 A Yes, I did.

11 Q You did due diligence in connection  
12 with someone entering the transaction?

13 A I did due diligence -- I actually  
14 discussed the due diligence -- there were a  
15 variety of partners involved in these  
16 transactions, but there is a small piece of  
17 the transaction where an investment advisor  
18 is actually facilitating the execution of a  
19 particular strategy, and my opinions had to  
20 do with the due diligence that was being  
21 performed by the investment advisor regarding  
22 the totality of that transaction.

23 Q So, in those cases, who -- what  
24 brokerage firm issued the confirmations?

25 A They were mainly coming from banks

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1 S. Pomerantz  
2 like UBS or Deutsche Bank, were the two large  
3 banks that were involved.

4 Q And those large banks issued faulty  
5 confirmations?

6 A I don't want to say faulty. I'm  
7 not here to assign value judgments or blames.  
8 Part of my opinion was -- had to do with  
9 information that was on the confirmation,  
10 that should have been on the confirmation,  
11 could have been on the confirmation. I put  
12 that information into my reports. In some  
13 cases, cases settled. In some cases, the  
14 courts opined as a result of litigation, and  
15 it was what it was.

16 Q What were the court opinions?

17 A You could read Bemont versus United  
18 States of America. You could read New  
19 Phoenix versus Commissioner of the IRS.  
20 There is one other case that is in bankruptcy  
21 court, and the plaintiff is listed on my CV.

22 Q So back to my question, which was:  
23 In connection with your due diligence of any  
24 investment advisor or hedge fund, have you  
25 ever reviewed trade confirmations?

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1 S. Pomerantz  
2 A Well, I just gave you examples in a  
3 litigation context.

4 Q Right. So, my question is: In  
5 your due diligence of -- in your performing  
6 due diligence on an investment advisor or  
7 hedge fund manager, have you ever reviewed  
8 trade confirmations?

9 A No. I reviewed transaction-level  
10 data, and I would input transaction-level  
11 data into systems to perform certain  
12 analyses. But I -- I never had a need to  
13 look at the confirmations.

14 Q So, you never asked to look at  
15 confirmations in any of the due diligence  
16 that you have done over the last 20 years?

17 A I was never -- I never had a need  
18 to do that.

19 Q And in your -- in due diligence --  
20 by the way, when you referred to your work as  
21 an expert in the tax shelter cases as due  
22 diligence, that was always a review after the  
23 fact after a challenge by the IRS; correct?

24 A Yes.

25 Q Okay. So in your work performing

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1 S. Pomerantz  
2 due diligence on investment advisors or hedge  
3 funds, have you -- have you had occasion  
4 to -- strike that.

5 In your work performing due  
6 diligence on hedge fund managers or on  
7 investment advisors, have you ever compared  
8 on a transaction-by-transaction basis  
9 transaction price versus the daily high-low  
10 range? Has that been something you have done  
11 in your due diligence work?

12 A I have looked at transaction prices  
13 against VWAP, but I have not looked at  
14 transactions versus highs and lows. But I  
15 have looked against VWAP as part of my due  
16 diligence.

17 Q Why haven't you looked at  
18 transactions versus highs and lows as part of  
19 your due diligence?

20 A I never had a reason to.

21 Q And I take it you don't believe  
22 that the due diligence that you have  
23 performed has been faulty for not having  
24 looked at that; correct?

25 A It depends on the circumstances.

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1 S. Pomerantz  
2 himself did not want to talk to me.  
3 Q And just to be clear, you never  
4 spoke to Danziger?  
5 A Not directly.  
6 Q And so when you wrote in your  
7 report -- did you write paragraph 26, or is  
8 that one --  
9 A Yes.  
10 Q -- of the paragraphs that Duff &  
11 Phelps wrote?  
12 A No. I wrote that.  
13 Q And so, when you wrote that, that  
14 wasn't quite accurate?  
15 A No. I mean Danziger -- it was a  
16 conference call with Arthur and Danziger, and  
17 I am on the call, and I asked Arthur if I  
18 could speak to Madoff, and Danziger  
19 interjects and says, "That's not going to  
20 happen."  
21 Q Well, what else -- tell me  
22 everything you can about your conversation  
23 with Danziger.  
24 A I was not talking to Danziger.  
25 Danziger was on a conference call with

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1 S. Pomerantz  
2 Arthur, to provide me with everything that he  
3 got from Danziger, and I had everything that  
4 Arthur got from Danziger.  
5 Q Did you make any requests to be  
6 given access to the trade confirmations or  
7 monthly statements that Beacon had?  
8 A I did not know that Beacon had  
9 statements. Beacon sent us basically an  
10 annual statement that would show us the  
11 assets under management and represented that  
12 money was invested in treasury bills, and my  
13 understanding was that that is all that  
14 Beacon had to provide Gordon.  
15 Q Did you -- did you ask or did you  
16 have Arthur ask whether Beacon had trade  
17 confirmations or monthly statements?  
18 A I asked for -- I said, "Give me  
19 everything you have."  
20 Q You understood that Beacon had a  
21 managed account; right?  
22 A I -- I -- actually, I don't really  
23 know what Beacon had, no. I didn't -- I  
24 didn't really know. There is a statement  
25 that goes from Beacon to Gordon that shows

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1 S. Pomerantz  
2 Arthur. I asked Arthur if I could talk to  
3 Madoff, and Danziger said, "That's not going  
4 to happen."  
5 Q How many times were you in the room  
6 or on a line when Danziger or Markhoff had a  
7 conversation with Arthur?  
8 A That is the only phone call I can  
9 remember.  
10 Q Why were you a participant in that  
11 phone call?  
12 A I just happened to be in Arthur's  
13 office when he was on the phone with  
14 Danziger.  
15 Q Were you in Arthur's office about  
16 the Beacon investment?  
17 A I don't recall why I was in his  
18 office. It could have been to talk about  
19 lots of things.  
20 Q Now, did you ask -- you understood  
21 that Beacon got copies of trade confirmations  
22 and monthly statements from Madoff; right?  
23 A I did not know that.  
24 Q Is that a question that you asked?  
25 A It's a question that I asked

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1 S. Pomerantz  
2 Gordon's investment.  
3 I -- I think I knew that Madoff was  
4 investing in separate accounts. I knew that  
5 this was not a commingled structure. But I  
6 didn't know -- I didn't know really what  
7 Beacon's structure was.  
8 Q And you didn't ask?  
9 A I said, "Give me everything," and  
10 all I got was the, basically -- at some  
11 point, I saw an annual letter that Beacon  
12 wrote to Gordon.  
13 Q I think somewhere in here you say  
14 part of due diligence is understanding the  
15 legal structure. Is that right?  
16 A It's -- it's an important -- yes.  
17 Q And did you do anything in that  
18 regard with respect to your due diligence on  
19 Beacon?  
20 A Yeah. You have to understand,  
21 Danziger is not talking to me. Danziger  
22 won't tell me anything, and Danziger is  
23 giving Gordon some information, and that is  
24 what is being provided to me.  
25 Q Did you review the Beacon offering

<p style="text-align: right;">Page 146</p> <p>1 S. Pomerantz</p> <p>2 is important to know, but it -- it -- and it</p> <p>3 will -- it will have some impact on the types</p> <p>4 of questions that you can ask.</p> <p>5 But when I look at what Madoff is</p> <p>6 purporting to do and the way that everything</p> <p>7 is set up, he is in essence acting like a</p> <p>8 hedge fund. He chooses to structure himself</p> <p>9 as a collection of thousands of separate</p> <p>10 accounts, but if you look at the definition</p> <p>11 of a hedge fund, which there really isn't</p> <p>12 one, but if you were to look at that</p> <p>13 definition, you know, Madoff talks like one,</p> <p>14 walks like one.</p> <p>15 Q A hedge fund, I believe as you put</p> <p>16 in here, is a pooled vehicle in some sense;</p> <p>17 correct?</p> <p>18 A A hedge fund -- well, that's not</p> <p>19 what a hedge fund is; right? It is executed</p> <p>20 through a commingled vehicle, but a hedge</p> <p>21 fund is an investment strategy on top of a</p> <p>22 pool of assets that is tending to follow</p> <p>23 certain types of investment strategies. It</p> <p>24 is -- it is then constructed and executed</p> <p>25 through a partnership arrangement, but that's</p>	<p style="text-align: right;">Page 147</p> <p>1 S. Pomerantz</p> <p>2 not what makes a hedge fund a hedge fund,</p> <p>3 unless you are a lawyer. That's not the way</p> <p>4 anyone in the industry will think of it.</p> <p>5 Q You understood that Madoff was not</p> <p>6 running a pooled vehicle; right?</p> <p>7 A I understood that -- I understood</p> <p>8 that -- that we -- well, Danziger, actually,</p> <p>9 was a separate account.</p> <p>10 Q So, you did understand that they</p> <p>11 had a separate account, that Beacon had a</p> <p>12 separate account?</p> <p>13 A I understood that he was -- I</p> <p>14 understood that he was a separate account and</p> <p>15 that Madoff was not operating as a commingled</p> <p>16 fund or a commingled trust, or some structure</p> <p>17 like that.</p> <p>18 Q And if someone is operating -- if</p> <p>19 someone owns a separate account, do you have</p> <p>20 an understanding of what types of</p> <p>21 documentation they typically get for that</p> <p>22 separate account and for trades in that</p> <p>23 separate account?</p> <p>24 A I mean, as a separate account, you</p> <p>25 would potentially receive confirmations. You</p>
<p style="text-align: right;">Page 148</p> <p>1 S. Pomerantz</p> <p>2 would receive monthly statements that would</p> <p>3 detail the transactions you engage in, and a</p> <p>4 variety of other things. You would have ISDA</p> <p>5 agreements. You would have options</p> <p>6 authorization agreements. You would have</p> <p>7 margin agreements.</p> <p>8 Q So, you understood that those</p> <p>9 things, trade confirmations, monthly</p> <p>10 statements, would come with a separate</p> <p>11 account and that Beacon had a separate</p> <p>12 account at Madoff?</p> <p>13 A I -- yes, I would agree that --</p> <p>14 yeah, I understood Beacon to have a separate</p> <p>15 account, and I also understand that those</p> <p>16 are -- those documents are commonly provided</p> <p>17 to separate account holders.</p> <p>18 Q So, in connection with your</p> <p>19 diligence, why didn't you ask for those</p> <p>20 specific categories of documents?</p> <p>21 A I basically was told they didn't</p> <p>22 exist. I asked for everything, and if I ask</p> <p>23 for everything, then what I get is what I</p> <p>24 assume to be everything.</p> <p>25 Q And based on your assumption that</p>	<p style="text-align: right;">Page 149</p> <p>1 S. Pomerantz</p> <p>2 those things did not exist for the Beacon</p> <p>3 separate account, what impact did that have</p> <p>4 on your diligence assessment?</p> <p>5 A It's -- I don't know how to answer</p> <p>6 that question. I think -- I think if I had</p> <p>7 documents like that, then I could have</p> <p>8 pursued my analysis in more detail. So, as I</p> <p>9 have testified, I did not find the results</p> <p>10 consistent with the strategy. Documents like</p> <p>11 that could have assuaged my suspicion, but</p> <p>12 those documents were not provided to me.</p> <p>13 The reality is, those documents</p> <p>14 would not have assuaged my suspicion. They</p> <p>15 would have raised other issues, which I have</p> <p>16 actually addressed in this report. But those</p> <p>17 documents were not provided to me.</p> <p>18 Q But you acknowledge that had you</p> <p>19 been provided with those documents, and been</p> <p>20 given access to Madoff, those things could</p> <p>21 have assuaged your suspicions?</p> <p>22 A I think the reality is, they would</p> <p>23 have confirmed my suspicions. That's the</p> <p>24 reality that most likely would have unfolded.</p> <p>25 If I had that information, then I would have</p>

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<p>1 S. Pomerantz</p> <p>2 Q Are you familiar with the fact that</p> <p>3 broker-dealers are required to be registered?</p> <p>4 A Yes.</p> <p>5 Q With whom?</p> <p>6 A I can't go into details on this.</p> <p>7 Q Do you have any understanding of</p> <p>8 what the SEC does in terms of oversight of</p> <p>9 broker-dealers?</p> <p>10 A I couldn't speak to that.</p> <p>11 Q Do you know that the SEC has</p> <p>12 oversight responsibility for broker-dealers?</p> <p>13 A Yes.</p> <p>14 Q And how do you have that</p> <p>15 understanding?</p> <p>16 A Because I have worked for</p> <p>17 broker-dealers.</p> <p>18 Q And do you know what requirements</p> <p>19 there are to qualify to be registered with</p> <p>20 the SEC as a broker-dealer?</p> <p>21 A No.</p> <p>22 Q Do you know the type of</p> <p>23 examinations the SEC does of broker-dealers?</p> <p>24 A No.</p> <p>25 Q If you look at paragraph 34 for a</p>	<p>1 S. Pomerantz</p> <p>2 minute. You say in paragraph 34, "All of the</p> <p>3 due diligence analyses I performed in</p> <p>4 connection with this report were industry</p> <p>5 customs and practices as of 1997, unless</p> <p>6 otherwise indicated."</p> <p>7 Do you see that?</p> <p>8 A Yes.</p> <p>9 Q And what you refer to as "industry</p> <p>10 customs and practices as of 1997," that is</p> <p>11 the 5P framework; right?</p> <p>12 A Yes.</p> <p>13 Q And it's not the specific</p> <p>14 quantitative tests that you --</p> <p>15 A No.</p> <p>16 Q -- performed?</p> <p>17 A No. All of the tools that are in</p> <p>18 here, those are tools that existed in 1997.</p> <p>19 There were a lot of other tools available in</p> <p>20 1997 that are not in this report, and there</p> <p>21 are probably tools that have been created</p> <p>22 last year that are not in this report.</p> <p>23 But all of the tools that I use in</p> <p>24 my analysis existed in 1997.</p> <p>25 Q Right, but -- the tools existed,</p>
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<p>1 S. Pomerantz</p> <p>2 but when you refer to the industry customs</p> <p>3 and practices as of 1997, you are referring</p> <p>4 to the 5 Ps framework; correct?</p> <p>5 A No. I am referring to the</p> <p>6 application of the tools to these particular</p> <p>7 products. Every one of these tools, so to</p> <p>8 speak, was commonly available in 1997, and is</p> <p>9 either something that I personally used or</p> <p>10 somebody used in evaluating a product that I</p> <p>11 was affiliated with.</p> <p>12 Q But, for example, as of 1997, and</p> <p>13 even as of 2008, you had never compared the</p> <p>14 transaction pricing to the daily high/low;</p> <p>15 correct?</p> <p>16 MR. SHEEHAN: Objection as to form.</p> <p>17 A I never had the need to perform</p> <p>18 that particular analysis. There are -- VWAP</p> <p>19 analysis, as an example, is something that I</p> <p>20 did perform in 1997.</p> <p>21 Q Okay. But if you focus on my</p> <p>22 question, which is the comparison of the</p> <p>23 transactions to the daily highs and lows,</p> <p>24 that's not something that you had performed?</p> <p>25 A Right. I just testified that that</p>	<p>1 S. Pomerantz</p> <p>2 is not a tool that I used in 1997, but it is</p> <p>3 a tool that was available and that people</p> <p>4 used in 1997.</p> <p>5 Q Who used it in 1997?</p> <p>6 A I could tell you Verizon, actually,</p> <p>7 in point of fact.</p> <p>8 Q What did Verizon use it for?</p> <p>9 A They used it in evaluating Weiss,</p> <p>10 Peck &amp; Greer. Verizon was a client of Weiss,</p> <p>11 Peck &amp; Greer, and they actually had several</p> <p>12 investments with Weiss, Peck &amp; Greer. And</p> <p>13 they performed -- admittedly, they performed</p> <p>14 more due diligence than we as an investment</p> <p>15 advisor would do. They performed a lot of</p> <p>16 analysis and due diligence on our</p> <p>17 performance, and when we would meet</p> <p>18 periodically, they would provide us with</p> <p>19 their observations.</p> <p>20 Q And some of their observations</p> <p>21 would be observations about how your trading</p> <p>22 compared to the day's highs and lows?</p> <p>23 A High, low, VWAP. A number of</p> <p>24 metrics.</p> <p>25 Q Who did you meet with at Verizon?</p>



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1 S. Pomerantz  
2 A Are we going to call them  
3 successful?  
4 Q Did you consider Steve Cohen to --  
5 at that time period, through 2008, to be a  
6 successful money manager or investor?  
7 A I think he had attractive returns.  
8 I think he had a lot of investors, and his  
9 returns are not publicly available. So, I  
10 would not use them in my analysis.  
11 Q Did you make any efforts to get the  
12 returns?  
13 A I actually have the returns, but  
14 that is a not a publicly available document.  
15 Q And how are his returns?  
16 A How are his returns?  
17 Q Yes.  
18 A Well, we all know they are  
19 volatile. They are, you know, pretty good.  
20 He is making 30 to 50 percent a year. But  
21 they're fairly volatile. There are  
22 significant drawdowns.  
23 It's not a part of my analysis,  
24 though, because he's not -- those returns are  
25 not publicly available. They weren't in any

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1 S. Pomerantz  
2 Q And there were no other -- other  
3 than these plus Paul Singer -- other than the  
4 ones that you used and then Paul Singer and  
5 Steve Cohen that you didn't use, there is no  
6 one else that you considered using; right?  
7 A There is no one that I considered  
8 using and rejected. These people jump out at  
9 me as having name recognition, as being large  
10 funds with impressive reputations.  
11 Q And the information that you used  
12 with respect to Warren Buffett wasn't on the  
13 actual returns of the investments he made but  
14 on the changes in stock price; right?  
15 A Yes.  
16 Q And you understand that there is a  
17 difference in those two measures; correct?  
18 A Yeah. I don't know anything about  
19 his actual returns. I just -- I just know  
20 the publicly traded returns.  
21 Q Well, the -- but you understand  
22 that a stock price is different than an NAV.  
23 A For an ETF. You are talking about  
24 the difference between the NAV and the  
25 discount, book value versus market value?

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1 S. Pomerantz  
2 database.  
3 Q So, you had it but you -- so you  
4 had the information, you just chose not to  
5 use it because it wasn't available to the  
6 public?  
7 A I'm not using any information that  
8 is not publicly available.  
9 Q And did you consider using -- are  
10 you familiar with Baupost?  
11 A Who?  
12 Q Baupost?  
13 A No.  
14 Q Do you know someone named Seth  
15 Klarman?  
16 A Yes.  
17 Q You don't know that he runs the  
18 Baupost funds?  
19 A I didn't know the name of it.  
20 Q Do you consider him to be a  
21 successful lead advisor?  
22 A I don't have information on it.  
23 Q And so, that is not one that you  
24 considered?  
25 A That's correct.

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1 S. Pomerantz  
2 Q The difference between how a stock  
3 trades and how a fund that reports an NAV as  
4 opposed to a price that can be higher or  
5 lower than the NAV trades?  
6 A Yeah. There is the NAV and then  
7 there's a discount, and actually Buffett  
8 himself talks about that issue and the  
9 difference between them.  
10 This analysis is based upon the NAV  
11 of the stock.  
12 Q The stock price, not the NAV;  
13 correct?  
14 A The NAV of the stock price as  
15 opposed to the discount or the book value.  
16 Q And why did you use that?  
17 A That's what's publicly available.  
18 That's what people think of when they think  
19 of Berkshire. That's what you can invest in.  
20 Q The -- and then you say in  
21 paragraph 291 that Merkin's accounts  
22 outperformed, often by a significant amount,  
23 every lead advisor across every performance  
24 metric.  
25 Do you see that?